


Below is an order of the court.



PETER C. McKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)
PETER SZANTO,) Bankruptcy Case No.
) 16-33185-pcm7
)
) ORDER OVERRULING OBJECTION
) TO CLAIM NUMBER 6
)
Debtor.)
_____)

In May of 2017, JPMorgan Chase Bank, N.A., (JPMorgan) filed a secured claim in the amount of \$1,477,444.62. See Claim Number 6 (the Claim). The Claim is secured by Debtor's residence in California (the Property). In June of 2017, Debtor filed an objection to the Claim. Doc. 123. Debtor requested that the Claim be allowed, but in the reduced amount of \$890,454.24. The Court held an evidentiary hearing on November 7, 2017, and entered an order overruling Debtor's objection to the Claim on November 17, 2017. Doc. 247. Debtor did not appeal that order.

After conversion of this case from chapter 11 to chapter 7, the chapter 7 trustee abandoned the Property. Doc. 562. Thereafter, in April of 2019, JPMorgan obtained relief from the automatic stay to

1 foreclose on, and obtain possession of, the Property. Doc. 728.

2 Over 16 months after entry of the order allowing the Claim, Debtor
3 filed a motion to reconsider the allowance of the Claim (the Motion to
4 Reconsider). Doc. 709. On April 30, 2019, the Court entered an order
5 denying the Motion to Reconsider on two grounds. Doc. 730. First, the
6 Court determined the Motion to Reconsider was not timely. Id. Second,
7 the Court determined that even if the Motion to Reconsider was timely,
8 Debtor had not demonstrated that reconsideration was warranted. Id.

9 On February 21, 2020, Debtor filed a document, Doc. 904, purporting
10 to assert an amended objection to the Claim on the Court's form number
11 763.3 (the Amended Objection). Form 763.3 includes a number of boxes
12 that may be checked to assert certain common claim objections. Debtor
13 checked six boxes, three of which he had also checked in his first claim
14 objection. In addition, Debtor checked a box on Form 763.3 labeled
15 "Other" and included, without elaboration, the statement: "Peter
16 Szanto's counterclaims exceed and offset claim." Doc. 904. Debtor now
17 requests that the Claim be disallowed in full.

18 JPMorgan filed a response (the Response). Doc. 929. After
19 considering the Amended Objection and the Response, the Court determines
20 that a hearing is not necessary. LBR 7007-1(d)(1). There are at least
21 three grounds upon which to overrule the Amended Objection.

22 First, Debtor's filing of an amended objection on Form 763.3 is
23 improper given the procedural and substantive history of this matter.
24 The Claim, which JPMorgan has not amended, was fully litigated in 2017.
25 Pursuant to § 502(j) and Fed. R. Bankr. P., 3008, a bankruptcy court is
26 empowered to reconsider the allowance of a proof of claim for cause.

1 However, where, as here, a claim has been fully litigated, a party in
2 interest must timely appeal or seek reconsideration of the allowance of
3 the claim pursuant to Fed. R. Civ. P. 60. In re Colley, 814 F.2d 1008,
4 1010 (5th Cir. 1987); In re Immenhausen Corp., 166 B.R. 449, 451 (Bankr.
5 M.D. Fl. 1994). The normal rules of finality apply to a bankruptcy
6 court's claim determination. Id. Debtor did not timely appeal the order
7 allowing the Claim. The Amended Objection is not a motion for
8 reconsideration and the Court declines to treat it as such. The dockets
9 in the main bankruptcy case and several related adversary proceedings
10 clearly show that Debtor knows how to file a motion for reconsideration
11 pursuant to Rule 60. Debtor's effort to to circumvent and ignore the
12 Court's 2017 order allowing the Claim by filing the Amended Objection is
13 abusive and improper.

14 Second, if the Court were to deem the Amended Objection to be a
15 motion for reconsideration pursuant to Rule 60, it would deny it. Rule
16 60 provides, in relevant part:

17 (b) On motion and just terms, the court may relieve a party or its
18 legal representative from a final judgment, order or proceeding for
the following reasons:

- 19 (1) mistake, inadvertence, surprise, or excusable neglect;
- 20 (2) newly discovered evidence that, with reasonable diligence,
21 could not have been discovered in time to move for a new trial
under Rule 59(b);
- 22 (3) fraud (whether previously called intrinsic or extrinsic),
23 misrepresentation, or misconduct by an opposing party;
- 24 (4) the judgment is void;
- 25 (5) the judgment has been satisfied, released, or discharged;
26 it is based on an earlier judgment that has been reversed or
vacated; or applying it prospectively is no longer equitable;
or

1 (6) any other reason that justifies relief.

2 Rule 60 (made applicable by Fed. R. Bankr. P. 9024).

3 "A motion under Rule 60(b) must be made within a reasonable time -
4 and for reasons (1), (2), and (3) no more than a year after the entry of"
5 the pertinent order. Fed. R. Civ. P. 60(c)(1). Debtor would be time
6 barred from invoking subsections (1), (2) or (3) of Rule 60(b) and the
7 Court can discern from the Amended Objection no basis upon which any
8 request for relief under the other grounds set forth in Rule 60 would be
9 timely, especially in light of the fact that the Court denied Debtor's
10 first motion for reconsideration almost one year ago, based in part on
11 the fact that it was untimely. Even if a motion for reconsideration
12 would not be time barred, Debtor has not met his burden of showing that
13 relief under Rule 60(b) is warranted. Indeed, Debtor does not even
14 articulate a basis for relief under Rule 60. Motions for reconsideration
15 that merely revisit the same issues already ruled upon by the trial
16 court, or which advance arguments that otherwise were originally
17 available, generally will not be granted. In re Negrete, 183 B.R. 195,
18 197 (9th Cir. BAP 1995). Such motions may not be used as a substitute
19 for a timely appeal. Id. In the course of denying Debtor's first motion
20 for reconsideration, the court rejected three of the grounds asserted in
21 the Amended Objection and Debtor could have, but failed to, assert the
22 others in his original claim objection. Moreover, in 2016, Debtor filed
23 an adversary proceeding against JPMorgan. Adv. P. 16-3118-pcm. The
24 Court ultimately dismissed all of Debtor's claims against JPMorgan and
25 that matter remains on appeal. If Debtor has any prepetition
26 counterclaims against JPMorgan, he either did, or should have, asserted

1 those claims in the adversary proceeding. In any event, Debtor does not
2 articulate any factual or legal basis for a counterclaim against JPMorgan
3 and a claim objection is not an appropriate proceeding to liquidate any
4 claims that Debtor believes he holds against JPMorgan.

5 Third, even if Debtor has established grounds under Rule 60 to
6 reconsider allowance of JPMorgan's Claim, which he has not, mootness
7 considerations likely would foreclose any redetermination of the Claim in
8 this Court. The chapter 7 trustee long ago abandoned the Property and,
9 as a result, it is no longer property of the estate. In addition, the
10 Court granted JPMorgan relief from stay to foreclose on the Property.
11 Under § 726, the chapter 7 trustee will not make any distribution on
12 account of the Claim because it is a claim secured by real property that
13 has been abandoned and for which relief from stay has been granted.
14 Because of those facts, no bankruptcy purpose would be served by further
15 litigation concerning, or liquidation of, the Claim in this Court.

16 For the reasons set forth above,

17 IT IS HEREBY ORDERED that the Amended Objection is OVERRULED. To
18 the extent the Amended Objection constitutes a motion for reconsideration
19 pursuant to Rule 60 of the Court's 2017 order allowing the Claim, it is
20 DENIED.

21 ###

22 cc: Peter Szanto (via ECF)
23 Chapter 7 Trustee (via ECF)
24 Gadi Shahak (via ECF)
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